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Real Esate Going Global
Vietnam

Tax and legal aspects of real estate investments around the globe

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Contents

All information used in this content, unless otherwise stated, is up to date as of 21 June 2012.

Real Estate Tax Summary – Vietnam

General

All land in the country belongs to the people and, consequently, the state. There is no private ownership of land. Individuals and organisations may only be granted land use rights.

Land and building

Foreign investors may access land under various forms to develop a real estate project in Vietnam, e.g. leasing the land directly from the State or participating in a joint venture with a local partner.

Taxation

Major taxes relevant to real estate business are land rental, non-agricultural land usage tax, registration fee, Value added tax ("VAT") and Corporate income tax ("CIT"). The tax rates are set out below.

Type of tax	Tax rate (%)
VAT	10
CIT	25
Registration fee	0.5
Non-agricultural land usage tax	0.03 to 0.2
Land rental and fee to use land	Determined by the provincial people's committee

Tax losses from transfer of real estate are not allowed to offset taxable profits from other activities, but can only be offset against taxable profits derived from the same activity in the future.

Dividend

There is no withholding tax on dividends paid by a Vietnamese company to an overseas corporate investor. However, notification to the tax authorities is required prior to the profit remittance.

Real Estate Investments – Vietnam

General

Introduction

This guide comprises an overview of the tax and legal aspects relating to the acquisition, developments and operation of commercial real estate in Vietnam.

Foreign investment control

Foreign investors are allowed to participate in certain real estate activities, such as housing construction for sales and lease, investment in infrastructure for leasing the land, and real estate-related services. They are, however, not permitted to engage in pure trading of property (i.e. to purchase apartments/buildings for sales or lease or to lease apartments/buildings for sublease) without investment on the infrastructure or construction of the property).

Land issues in Vietnam

Legal aspects

Land use rights

There is no freehold ownership of land in Vietnam. The Government can allocate or lease the land use right ("LUR") to the investors by issuing a LUR certificate. Land allocation is only applied to Vietnamese investors.

Foreign investors may obtain LURs in Vietnam through (i) leasing the land from the Government and other permitted landlords, or (ii) participating in a joint venture company in which a local partner contributes the LUR as capital.

The LUR certificate does not certify the land ownership of the holder but recognises the right of the holder to use the land.

The term of a LUR is limited to 50 years, but up to 70 years under certain special cases. Such term can be renewed, subject to certain conditions.

The land users' rights

The rights of a foreign invested company over a LUR will vary according to the method of rental payments.

A foreign investor who made a one-time payment for the term of the lease is allowed to transfer, mortgage, sub-lease, or contribute the LUR to form an entity.

Where the rental is paid annually, the land user's right over the land is very limited, e.g. transfer of the LUR is not allowed.

Acquisition of residential apartments by foreigners

Foreign invested companies and certain categories of foreigners are entitled to purchase residential apartments in Vietnam. Conditions apply, e.g. the ownership of an apartment by a foreigner is limited to 50 years.

A foreigner is only permitted to acquire one apartment and only for personal use, while a foreign-invested company may purchase a number of apartments.

Tax aspects

Property tax

Vietnam does not have a property tax (the law on property tax is still in draft). However, the rental of LURs by foreign or domestic investors is in effect a property tax. It is usually known as land rental or fee to use land and the range of rates is wide, depending upon the location, infrastructure and the industrial sector in which the business is operating.

The land rental rates and fee to use land are determined by the provincial people's committee and can be adjusted on a periodic basis if there is significant movement in the real estate market.

The land rental rate can also vary, depending on how investors obtain the land, i.e. via acquisition in public auction, direct negotiation with the relevant authorities, or assignment of land by the government (only in specific cases and subject to conditions).

For certain projects such as development of housing at cities for low-income earners, etc., land rental or fee could be exempt.

Non-agricultural land usage tax

Residential land, non-agricultural land used for business are subject to non-agricultural land usage tax, with some exemptions.

Non-agricultural land usage tax is calculated by multiplying the taxable land area with the price and the applicable tax rate.

The taxable land area is the total land area allocated by or leased from the Government. The price of a square meter of taxable land is the price of land based on its use purpose which is promulgated by the government authorities and kept stable for a 5-year period starting from 1 January 2012.

Tax rates are in the range of 0.03% t0 0.2% depending on the type of land. Land for investment projects registered by investors and approved by competent state agencies is subject to the flat tax rate of 0.03%.

Registration fee, value added tax and corporate income tax

Please refer to our comments on '*Tax aspects*' under the section '*Construction issues and new buildings*' below.

Construction issues and new buildings

Legal aspects

Sale and purchase of an apartment/house

Subject to certain conditions, it is possible for a developer to receive advance payments from buyers prior to completion of construction of a project. For example, the first payment can only be made after the developer has completed construction of foundation.

A standard contract for sale of apartments must be prepared by a developer and registered with the authority. It must be consistent with the template issued by the Ministry of Construction.

Real estate companies must sell and/or lease out apartments/buildings through a real estate trading floor. The sale and purchase of apartments/buildings by individuals are not required to be carried out through real estate trading floor.

In the past, the owner of an apartment/building (including house) was issued with a certificate of ownership of apartment/building in addition to the LUR certificate as a separate document evidencing their title over the apartment/building. From 10 December 2009, a unified certificate which combines LUR and apartment/building ownership is issued to the owners.

Regulatory issues

Construction issues in relation to development of a property project are mainly governed by the Construction Law, Real Estate Business Law, Land Law, Housing Law and numbers other decrees, circulars legislations.

Construction permit

A construction permit is required before commencing construction of a project, except for certain limited cases, e.g. small scale infrastructure and projects located in remote areas. It is possible to amend an issued construction permit subject to the approval of the licensing authority.

Construction of a property project must comply with the approved master plan, local land use plan and other specific legislation.

Building works

Construction works

The developer must engage a qualified contractor(s) to carry out the construction of a property project.

The developer must supervise the works implemented by the contractors. If the developer is incapable of carrying out the supervision of construction works, a consultancy must be employed for this purpose.

Builder’s liability

The warranty period of a project is calculated from the signing date of the hand over minute or from the date on which construction is completed and the project is put into operation.

The contractors shall be responsible for warranty of the works for a period of at least 24 months for special grade and grade one projects. For the remaining projects, the warranty period must be not less than 12 months.

Insurance

Compulsory insurances

Insurance for works is to be incurred by the developer. Where the insurance is included to the contract price, the contractor will procure such insurance.

The contractors and the consultant are required to procure equipment, professional liability and third party liability insurances in accordance with the law.

Subcontracting

For a project with 30% or more of the investment capital funded by the State, the main contractors are not permitted to subcontract the whole works. For private projects, the volume of works to be subcontracted can be agreed by the parties.

Tax aspects

Registration fee

Registration fee is the fee payable on the registration of ownership, or the right to use land and building (residential, office building, factory, shops, warehouse and other construction works), unless specific exemption is provided under the regulations, e.g. capital contributions in form of land use rights.

The registration fee of LUR and building is calculated based on the price list stipulated by the government authorities. The rate is 0.5%, but the maximum registration fee is capped at VND 500m (approximately USD 24,000) per single asset (for each time of registration). For this purpose, land and the buildings on the land are considered a single asset.

The registration fee obligation arises when an organization or individual registers the right to ownership or use of assets with the competent State body.

Value added tax

Rental income derived from Vietnamese property is taxable in Vietnam. A 10% VAT is imposed on gross rental revenue.

A 10% VAT also applies to the sale or assignment of houses or infrastructure facilities.

The transfer of LURs is VAT exempt. However, VAT will apply to the taxable price for ‘trading in property’, which is the selling price of the property minus (-) deductible land price for VAT purposes. The deductible land price depends on how the land is acquired. For example, if land is allocated by the State, the deductible land price is defined as land use fee plus land compensation and clearance expenses. If the land is acquired from another organisation or individual, the deductible land price is the land price at the time of acquisition (i.e. based on the property transfer contract) plus the value of infrastructure. However, if it is not possible to determine the land price at the time of acquisition, the land value set by the government authorities at the time of acquisition will be used.

Corporate income tax

25% CIT will apply to rental income received less any deductible expenses. Deductible expenses for CIT purposes, amongst others, include:

- depreciation
- repairs
- interest on loans
- land rental and

- other deductible expenses.

In respect of depreciation, the maximum allowable annual depreciation rates for buildings and other architectural constructions are: 2% to 4% for solid houses and buildings; 4% to 16.6% for other types of houses and buildings; 5% to 20% for warehouses, containers, bridges, roads, air runways, parking places and driving yards; 3.3% to 16.6% for dams, breakwaters, canals, trenches for irrigation, ports and docks; and 10% to 20% for other construction works.

The cost of LURs, if paid in advance is capitalised and amortised over the term of the lease contract/payments.

Enterprises intending to apply different rates must obtain permission from the Ministry of Finance.

LURs with indefinite term are recorded as intangible fixed assets and amortisation, if any, is not deductible for CIT purposes.

Business establishments earning regular income from the sale of property, transfer of LURs and land lease rights will be subject to 25% CIT.

The taxable income from the transfer will be calculated based on the revenue from the transfer less (-) historical cost of properties and deductible expenses related to property transfer activities.

In respect of the transfer of LURs, the taxable revenue is the higher of the actual transfer price or the price specified by the government authorities.

Operating tax losses incurred in any year can be carried forward for five years to offset against taxable profits. Tax losses from the transfer of real estate are not allowed to offset taxable profits from other activities. Tax losses from the transfer of real estate can be offset against taxable profits derived from the same activity in the future.

Income from transfer of LURs/property and rental derived by individuals

CIT will not apply to individuals or households earning income from the transfer of real estate. Instead, it will be subject to Personal income tax (PIT) at the rate of either 25% of the gain or 2% of the gross proceeds depending on the availability of documents supporting the purchase price and related expenses incurred.

Rental income derived by an individual is subject to PIT at progressive tax rates. The highest rate currently is 35%.

Withholding tax on profit remittance

Foreign investors are permitted to remit their after tax profits annually after the end of the financial year or upon termination of the investment in Vietnam.

Foreign investors are not permitted to distribute and remit dividends overseas if the financial statements of the profit making year show that there is still accumulated losses.

There is no withholding tax on dividends paid by a Vietnamese company to an overseas corporate investor. However, notification to the tax authorities is required prior to the profit remittance.

Purchase of a real estate company

Legal aspects

It is possible for a foreign investor to acquire shares/interest in whole or in part of a real estate company in Vietnam, subject to certain conditions.

The target company's scope of business must fall within real estate activities that are permitted to be carried out by foreign investors.

The foreign invested companies may also consider receiving the transfer of a property project from other developers. The transfer of a property project is subject to certain conditions, e.g. the developer of the project has completed the land site clearance and has obtained the LUR.

Tax aspects

The transfer of interest/shares in a company in Vietnam is exempt from VAT. No registration fees are imposed on the transfer of interest/shares.

Gains on transfer of an interest (as opposed to shares) are subject to 25% capital assignment profits tax. The taxable gain is determined as the excess of the sales proceeds over the cost (or initial value of contributed charter capital for the first transfer) less transfer expenses.

A foreign company (not incorporated in Vietnam) is taxed on the transfer of shares of a public joint stock company on a deemed basis of 0.1% of the sales proceeds. A double tax agreement may provide protection from the above taxes.

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